UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Robert Banks, et al.

            v.   Civil No. 11-cv-322-JL

Mark Hall, et al.

SUMMARY ORDER

The motion to dismiss (document no. 4) filed by the New

Hampshire State Police is granted. The 11th Amendment precludes

federal suits against a state agency unless the state has waived

its sovereign immunity, Will v. Michigan Dept. of State Police,

491 U.S. 58, 66 (1989), and "a State's waiver of sovereign

immunity in its own courts is not a waiver of the Eleventh

Amendment immunity in the federal courts," Pennhurst St. Sch. &

Hosp. v. Halderman, 465 U.S. 89, 99 n.9 (1984). Although New

Hampshire has waived its sovereign immunity with respect to

claims for personal injury (like those in this case), it has

limited jurisdiction over such claims to the state board of

claims and/or the superior court, depending upon the amount in

controversy. R.S.A. 541-B:9(II-IV). These claims therefore may

not be brought in federal court. See, e.g., Roderick v. New

Hampshire Hosp., No. 98-543-M, 2000 WL 1466127, *13 (D.N.H. Jan.

28, 2000) (claim for negligence against state hospital could not

proceed in federal court where waiver of sovereign immunity for

negligence claims was limited to suit before board of claims or

state courts). The court's possible jurisdiction over similar or identical claims against co-defendants makes no difference; even if the court were to have jurisdiction over claims against the state that arise out of the same transaction, it could not exercise jurisdiction over counts 6 and 7 because "neither pendent jurisdiction nor any other basis of jurisdiction may override the Eleventh Amendment." Pennhurst, 465 U.S. at 121 (holding that federal courts cannot exercise pendent jurisdiction over state-law claims barred by doctrine of sovereign immunity).

The claims against the New Hampshire State Police are dismissed.

SO ORDERED.

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Joseph N. Laplante
United States District Judge

Dated: October 24, 2011

cc: Thomas G. Gleason, Esq.
     Kevin H. O'Neill, Esq.
     John C. Vinson, Esq.